

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE-COLUMBIA DIVISION

KAREN MCNEIL, et al.)	
)	Case No.: 1:18-cv-00033
Plaintiffs)	
)	JUDGE CAMPBELL/
v.)	JUDGE FRENSELY
)	
COMMUNITY PROBATION SERVICES, LLC, et al.)	
)	
Defendants)	

NOTICE REGARDING DISPOSITIVE MOTIONS RE: ORDER (DOC. 382)

Comes now the Defendant Community Probation Services, LLC, and Patricia McNair, pursuant to the Court's Order (Docket No. 382), and gives notice that these Defendants are unable to formally join in the PSI Motion for Summary Judgment, because the PSI Motion for Summary Judgment is based substantially entirely on the individual depositions of the PSI probationers and the facts specific to their own criminal history (See PSI's Undisputed Facts, Docket No. 302). As PSI's undisputed facts are entirely confined to those individuals and the detailed dates and history of their probation violations, PSI's motion simply does not address the undisputed facts concerning CPS. As a result, CPS would be unable to satisfy Rule 56's requirement of demonstrating that the facts are not in dispute as to its own probationers without submitting its own undisputed facts and filings, which the Court's Order does not permit.

The CPS defendants continue to contend that the material facts are not in dispute, as asserted in CPS's own prior motion and filings. (See Docket Nos. 245 - 251). These defendants do also fully agree with PSI that all of Plaintiff's claims fail as a matter of law for the reasons stated by PSI, and for the reasons stated in CPS's own prior memorandum (excluding qualified immunity on the § 1983 claims, which has of course been adjudicated). CPS and McNair do ask the Court to consider CPS's own memorandum previously filed with its own summary judgment

(Docket No. 251), which directly addresses the underlying legal principles involved in the PSI Motion, including the legal sufficiency of the due process claims, including where the probationers have only a “conditional liberty” interest which is “properly dependent on observance of special...restrictions.” *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972). (See Docket Entry No. 251, Part A, p. 2-6). Moreover, the private defendants did not cause any deprivation. See *Brinson v. Providence Community Corrections*, 2016 WL 9651775, at *8 (S.D. Ga. 2016) (citations omitted), vacated and remanded on jurisdictional grounds, 703 Fed. App’x. 874 (11th Cir. 2017), and aff’d, 2018 WL 4059379 (S.D. Ga. 2018). Further, Plaintiffs received all the process that was due. See *U.S. v. Espalin*, 350 F.3d 488, 496 (6th Cir. 2003) (“When the recommendation is based fairly on the facts and dispassionately traces its way through the law to a sensible conclusion, the requirement of neutrality has been met.”); see also *Goldstein v. Del. Bur. of Adult Corr.*, 931 F.Supp. 284, 298 (D. Del. 1996) (report, recommendation, and testimony of Receiver, who had direct financial interest in the outcome of revocation proceeding, did not violate probationer’s due process right to a neutral decision maker, because it “provided [judge] with the information that she needed to make an informed decision regarding Goldstein’s compliance with the conditions of his probation”), aff’d, 127 F.3d 1095 (3d Cir. 1997).

Further, the Plaintiff’s equal protection claims fails, particularly when the Court applies the proper rational basis review. (See Docket Entry No. 251, Part B, p. 6-11). And probationers remaining on supervised probation do not violate substantive due process or equal protection. (See Docket Entry No. 251, Part C, p. 11-14).

The CPS Defendants do fully support PSI’s Motion for Summary Judgment with respect to all legal issues, including the RICO claims (See Docket Entry No. 251, Part VI, p. 21-25), and the state law claims (See Docket Entry No. 251, Part IX, p. 26-28).

Respectfully submitted,

MOORE, RADER,
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By /s/ Daniel H. Rader IV, BPR 025998

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on July 8, 2020, a true and exact copy of the foregoing pleading was filed electronically. Notice of this filing was sent by operation of the Courts electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access the filing through the Court's electronic filing system.

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This the 8th day of July, 2020.

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